IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1115 of 2005

DHARAM SINGH
V/S
STATE & ANR.

Mr. HS SIDHU, for the appellant / petitioner

Mr. BL BHATI, AGA, for the respondent

Date of Order : 3.5.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

The only submission made was that the petitioner was placed under suspension vide Annexure-1. However, his suspension has been revoked but then he has not been paid the admissible emoluments for the period of suspension as required by Rule 54. Learned counsel submitted that when he was placed under suspension vide Annexure-1 on account of pendency of the criminal case, and in that criminal case he has been acquitted vide Annexure-2 in view of the judgment of this Court in Manjeet Singh Vs. District Collector, Sri Ganganagar S.B.Civil Writ Petition No. 456/2000 decided on 17.12.2000, the petitioner is entitled to have direction to be issued to the respondents to make payment of full salary and allowances during the period of suspension.

I have considered the submissions.

So far factual aspect is concerned, it is not in dispute that the petitioner was suspended vide Annexure-1, it is also not in dispute that the petitioner was acquitted vide Annexure-2, and passing of the order Annexure R/1 dt. 1.3.2005 is also not in dispute, and in this Annexure R/1 at page-3 the petitioner has been ordered to be reinstated with immediate effect, and vide this order Annexure R/1 the petitioner has been imposed a penalty of with-holding of one grade increment with cumulative effect.

In Manjeet Singh's case the facts were that the petitioner therein was involved in a criminal case, and was put under suspension vide order dt. 22.12.1994. Then vide judgment dt. 16.9.1999 he was acquitted, and vide order dt. 22.11.1999 he was reinstated but had not been paid any amount other than subsistence allowance paid during the suspension period, therefore, the writ petition was filed. The writ petition was defended on the ground that though the petitioner had been reinstated but a departmental enquiry has been initiated vide charge sheet dt. 9.6.2000 which is pending, and therefore, he is not entitled for anything other than whatever he has been paid as subsistence allowance. On these facts it was held that according to Rule 54(2) in case an employee has been exonerated fully, or authority holds that the employee had

been put under suspension without any justification, he shall be entitled for full salary and dearness allowance to which he was otherwise entitled. It was found that according to this rule, the question of exoneration would arise only after holding a departmental enquiry, and that the suspension was not because of pendency of disciplinary enquiry, rather it was based on the pendency of the criminal trial wherein he was acquitted, the question of withholding the dues does not arise. Then, reference was made to another judgment of this Court in Prem Sukh Vs. State of Rajasthan 1993(1) WLN-436 wherein it was held that if suspension is based exclusively on pendency of the criminal trial and the employee is acquitted, the suspension goes away and the same cannot be sustained. With these findings the respondents were directed to pay the arrears, if any, within a period of three months.

In my view, the present case is distinguishable on facts. Some dates in the present case are relevant, inasmuch as, Annexure-1 is dt. 31.3.2001, and as appears from Annexure R/1 that the charge sheet was served on 18.3.2002 i.e. During suspension period, and before acquittal of the petitioner in criminal case as he had been acquitted on 15.7.2004 vide Annexure-2. What is significant to note is that notwithstanding this acquittal, vide Annexure-3 the suspension of the petitioner was continued on account of pendency of departmental enquiry, inasmuch

as, it is mentioned therein that the petitioner's suspension was revoked for the period 24.1.2005 to 10.2.2005 i.e. Panchayat Elections. This shows that the suspension continued on account of the pendency of the departmental enquiry, and that departmental enquiry has come to an end culminating into finding the petitioner guilty, and imposition of major penalty of withholding of one grade increment with cumulative vide Annexure R-1. This Annexure R-1 is not under challenge before me in this writ petition. That being the position withing the meaning of Rule 54, it is not the case where the the competent authority holds that the Government servant has been fully exonerated, or that suspension was wholly unjustified, so as to entitle the petitioner to be paid fully pay and dearness allowance. In Manjeet Singh's case as noticed above, the suspension order dt. 22.12.1994 was uncoditionally withdrawn on 22.12.1999, and he was reinstated and the departmental enquiry was initiated much later i.e. on 9.6.2000 which was pending.

In that view of the matter, in my opinion, in view of Annexure-3 read with Annexure R-1, the petitioner is not entitled to any relief.

The writ petition is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/